GOVERNMENT OF THE DISTRICT OF COLUMBIA
METROPOLITAN POLICE DEPARTMENT

July 9, 2025

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D.C. Auditor
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Washington, D.C. 20004

Dear Ms. Patterson,

Thank you for providing the Metropolitan Police Department (MPD) with an opportunity to review and respond to the District of Columbia Auditor's (ODCA) draft audit, "*The Metropolitan Police Department and the Use of Deadly Force: The Karon Hylton-Brown Case*." We recognize the critical nature of this event for the community, the Department, Officer Terence Sutton, and Lieutenant Andrew Zabavsky, and hoped that, consistent with past audits, the audit would present a balanced, impartial review and best-practice recommendations for the MPD to implement. Unfortunately, the audit failed to meet these expectations as detailed below.

At its core, the audit challenged the Department's disagreement with the jury's findings in the criminal cases involving Officer Sutton and Lieutenant Zabavsky. Put simply, the Department reached a different conclusion because it had access to information that the jury was precluded from hearing and had the knowledge of MPD practice and policy, which the jury did not. Among other omissions, the jury was prohibited from hearing about Mr. Hylton-Brown's extensive and violent criminal history, that he was a member of the KDY gang that caused havoc to this community,[1] that he was wearing an ankle monitor and carrying over $3,000 at the time of the incident, or that the Fourth District crime suppression team (CST) including Officer Sutton and Lieutenant Zabavsky, were briefed just a short time before this attempted stop by another officer concerned about in-fighting within the KDY gang because of her earlier observations of Mr. Hylton-Brown that evening. These facts, in addition to Mr. Hylton-Brown's flight from police and the numerous traffic violations they observed him commit, provided a legal basis for the members to conduct a *Terry*[2] stop. Instead, the jury was left with the incorrect impression

[1] https://www.washingtonpost.com/dc-md-va/2025/04/23/kennedy-street-crew-sentenced-dc/
The last of 17 members of D.C.'s notorious Kennedy Street Crew convicted in a sweeping gang investigation were sentenced to prison this month, capping a sprawling probe of what authorities have labeled one of the city's most violent and sophisticated street operations. Among them was [name omitted] whom prosecutors said helped lead a criminal enterprise that for years terrorized a roughly 12-block stretch of Northwest Washington's Brightwood Park neighborhood, where residents lived in the shadow of gun violence tied to the drug trade. 'Put simply, the KDY Crew is a driver of the cycle of violence associated with drug trafficking and firearms that has plagued the Kennedy Street neighborhood for years,' assistant U.S. attorney Matthew W. Kinskey wrote in a court memorandum.
[2] *Terry v. Ohio*, 392 U.S. 1.

that the police were solely attempting to stop Mr. Hylton-Brown, because he was not wearing a helmet.

The murder charge against Officer Sutton was unsupported by the undisputed facts of the case. Officer Sutton's vehicle never made physical contact with the moped and was three car-lengths behind the moped at the time Mr. Hylton-Brown pulled out onto Georgia Avenue. The Major Crash detective expressly found that Mr. Hylton-Brown was the cause of the accident because he failed to yield the right of way when he entered Georgia Avenue, but again, the jury was prohibited from hearing this information. The law authorizes police to stop suspects, and while MPD's policy is more restrictive than the law, an administrative violation of MPD policy does not constitute a criminal violation of the law.

Similarly, the obstruction of justice charges do not stand up to scrutiny. Both Officer Sutton and Lieutenant Zabavsky immediately activated their BWCs following the crash and CST members promptly provided first aid to Mr. Hylton-Brown. Within three minutes of the crash, Lieutenant Zabavsky requested an ambulance and spoke with the EMT personnel once the ambulance was on the scene. Officer Sutton immediately checked on the welfare of the individuals in the striking vehicle, obtained their information, and took photos on the scene. The CST members kept their BWCs activated the entire 22 minutes that they were on the scene of this accident, with Officer Sutton and Lieutenant Zabavsky only deactivating their BWCs after the ambulance had left the scene.

Much of the obstruction case relied on a *draft* crash report started by Officer Sutton, which he prepared without a review of his BWC, never reviewed, and never finalized. His draft report described Mr. Hylton-Brown as "unresponsive," while the prosecution argued he should have used the word "unconscious." The prosecution criticized Officer Sutton's draft description of Mr. Hylton-Brown's injury as a "superficial abrasion on the left eyebrow line" even though the independent Medical Examiner described it similarly as a "roughly 1-inch vaguely circular abrasion on his forehead." Before Officer Sutton had a chance to finalize the report, it was taken over by the Major Crash detective assigned to the case who stated in the Internal Affairs report that he did not find any inconsistencies or issues with Officer Sutton's draft crash report. In sum, parsing word choices in a draft report that was never finalized, reviewed, or submitted simply does not support the finding of obstruction of justice.

The author of the audit, Mr. Michael Bromwich, made clear throughout the audit that he believed that both Officer Sutton and Lieutenant Zabavsky should have been terminated from MPD. However, ultimate responsibility for the decision and discipline imposed in these matters lies with me. I acknowledge and respect that others feel strongly regarding these cases, but I am confident I made the correct decision based on the totality of the circumstances, including the information the jury was not permitted to hear, my experience in law enforcement, and comparable administrative cases. Accordingly, and as detailed more thoroughly below, I reject the audit's findings and recommendations.

The Audit Ignored the Legal Effect of the Pardons

While MPD based its ultimate disciplinary decisions for Officer Sutton and Lieutenant Zabavsky upon its own thorough independent review, it is also important to recognize the controlling case law governing pardons, which was not addressed in the audit. When the D.C. Circuit Court *per curiam* ordered that the judgments against Officer Sutton and Lieutenant Zabavsky to be vacated and the cases to be remanded with instruction to dismiss them as moot, it did so following the precedent established in *U.S. v. Schaffer*, 240 F. 3d 35 (D.C. Cir. 2001) (*en banc*). *Schaefer* arose out of the December 22, 2000, full and unconditional pardon by then-President Bill Clinton where the independent counsel advanced the suggestion that Schaffer's criminal conviction was "established as a matter of law" even after the pardon was issued. *Id.* at 37-38. The D.C. Circuit disagreed, stating that the suggestion that Schaffer's conviction was a *fait accompli* was wrong since "[f]inality was never reached on the legal question of Schaffer's guilt." *Id.* at 38. The Circuit Court in *Schaffer* explained the effect of such a vacatur and dismissal following a Presidential pardon as follows:

> When a case becomes moot on appeal, whether it be during initial review or in connection with consideration of a petition for rehearing or rehearing *en banc*, this court generally vacates the District Court's judgment, vacates any outstanding panel decisions, and remands to the District Court with direction to dismiss. [internal citations omitted] Because the present mootness results not from any voluntary acts of settlement or withdrawal by Schaffer, but from the unpredictable grace of a presidential pardon, vacatur is here just and appropriate. *See U.S. Bancorp*, 513 U.S. at 24-25.
>
> Given this posture of the case, the efficacy of the jury verdict against Schaffer remains only an unanswered question lost to the same mootness that the independent counsel so readily concedes.

Id.

Like in *Schaffer*, Officer Sutton's and Lieutenant Zabavsky's cases were pending appeal at the time of the pardons. The jury verdicts in the district court were merely the first phase of the criminal process that became moot upon entry of the pardon. The audit's repeated reliance upon those vacated verdicts is misplaced given this jurisdiction's binding precedent in the *Schaffer* decision, which the audit failed to consider.

Consistent with *Schaffer,* MPD Followed its Administrative Process for the Administrative Violations

When the indictment was issued in this matter, Officer Sutton and Lieutenant Zabavsky were placed on indefinite suspension without pay pursuant to the collective bargaining agreement and MPD practice. Thereafter, these members remained in this status until the criminal matter concluded consistent again with MPD practice and the fact that the members were on release pending their appeals, as the trial court admitted there were substantial questions to be decided on appeal. To be clear, MPD was not involved in the executive pardons that were issued to these members.

Once the pardons were issued, MPD followed its administrative process, consistent with *Schaffer.* After the court vacated the convictions and dismissed the criminal cases, MPD conducted a thorough review of the remaining administrative matter. Following MPD's practice under the discipline system in place at the time, this review was conducted by the Office of the General Counsel, which found administrative, not criminal, misconduct, and identified the appropriate disciplinary penalty consistent with past comparable discipline cases. This review also recognized Officer Sutton and Lieutenant Zabavsky's years of exemplary service to the community and high achieving performance evaluations.

This was an Unprecedented Prosecution

Any impartial evaluation of this matter must begin with the acknowledgement that the prosecution in this matter was unprecedented. It is undisputed that no law enforcement officer in the nation had *ever* been criminally charged for the law enforcement action that occurred here. Police pursuits are part of law enforcement operations nationwide, and in some cases have led to tragic outcomes. Yet no law enforcement officer in any other jurisdiction had ever been criminally prosecuted for murder as the result of a pursuit before this case. Indeed, the audit cited no other cases and completely ignored the fact that a police officer had never before been prosecuted for murder for engaging in a pursuit. It is inexplicable how a police pursuit can be considered murder without a change in the murder statute. The police must be able to engage in these core functions without fear that they will be subjected to unprecedented criminal prosecution. Neither Officer Sutton nor Lieutenant Zabavsky could ever have imagined that their actions would be considered criminal since no police officer had ever been prosecuted for engaging in such routine law enforcement operations like this before. While the fact that this prosecution was literally unprecedented was undisputed by the prosecution, Officer Sutton and Lieutenant Zabavsky were prohibited from presenting this information to the jury.

The Murder Charge was Unsupported

MPD determined that Officer Sutton was not the cause of Mr. Hylton-Brown's death, recognizing the voluntary nature of Mr. Hylton-Brown's actions. First, to find that Officer Sutton caused his death, MPD would have to believe that somehow Officer Sutton caused Mr. Hylton-Brown to flee from the attempted traffic stop or that Mr. Hylton-Brown did not have a legal obligation to stop for the police, both of which are nonsensical. Instead, Mr. Hylton-Brown chose to flee from the police, drive in a reckless manner, operate a vehicle under the influence of multiple drugs, and forgo wearing a helmet. Ultimately, it was Mr. Hylton-Brown who chose to fail to yield the right of way when exiting the alley onto Georgia Avenue, and indeed the Major Crash detective assigned to this case determined that Mr. Hylton-Brown was the cause of the accident, due to his failure to yield the right of way when he exited the alley.

The murder charge was also unsupported by the undisputed facts that the MPD vehicle never made physical contact with the moped and was three car-lengths behind the moped at the time Mr. Hylton-Brown pulled out onto Georgia Avenue. It is important to understand that the MPD pursuit policy is more restrictive than the law; a murder conclusion ignores that the law authorizes police to stop suspects and does not constrain

police from following traffic regulations when in pursuit of a suspected violator of the law. Violation of an agency policy intentionally drafted to be more restrictive than the governing law cannot serve as a basis for a criminal charge.

The jury was also precluded from hearing any evidence related to Mr. Hylton-Brown's extensive criminal history as a violent drug dealer that included multiple arrests for illegally possessing a gun, assault, assault on a police officer, robbery, and selling drugs, and the fact that he was a member of the KDY gang. These prior criminal offenses all occurred in the same area around Kennedy Street (PSA 403), which is why Mr. Hylton-Brown was well known to these CST members. The court also precluded evidence that Mr. Hylton-Brown was wearing an ankle monitor and $3,186 in U.S. currency was strapped to his leg at the time of this matter. Relatedly, a Fourth District officer was precluded from testifying about her concerns that she shared with Sutton, Zabavsky and the other CST members just minutes before their encounter with Mr. Hyton-Brown – namely, that there was in-fighting within the KDY gang and that she feared retaliation because she saw Mr. Hylton-Brown a little earlier that evening involved in a verbal altercation with another KDY member that almost turned violent.

These facts, in addition to the testimony that Mr. Hylton-Brown was turning his body in such a way as to conceal something on his person ("blading") while he operated the moped, supported the members' argument that there were several reasons they wanted to stop Mr. Hylton-Brown in addition to his flight from police and the numerous traffic violations they observed him commit. However, the court precluded this evidence and did not allow the defense to argue that there was a legal basis to conduct a *Terry* stop. Instead, the jury was left with the incorrect impression that the police were solely attempting to stop Mr. Hylton-Brown, because he was not wearing a helmet. While the jury was precluded from hearing these facts, they were available to Mr. Bromwich but were omitted or not considered in the audit.

The Obstruction of Justice Charges were Unsupported

MPD found that neither member obstructed justice nor attempted to obstruct justice in this matter. The audit's comparison of MPD's resolution of the administrative matter to the jury verdict in the criminal matter was inappropriate for the following three reasons: 1) the jury verdict was vacated by the dismissal and any reliance on that verdict is inconsistent with this jurisdiction's binding precedent in *Schaffer*, 2) MPD conducted a complete review of *all* the evidence in this matter, including evidence and arguments the jury was prevented from hearing, and 3) MPD is in the best position to understand MPD policy and practice with which the jury was unfamiliar. Moreover, the audit misstates or outright omits facts and information, evidence, and testimony that contradicts the jury's obstruction of justice finding.

The members took no action to obstruct justice on the scene

The Department's review of all of the evidence and application of MPD policy[3] revealed that these members' actions that evening was the opposite of a "cover-up," and the evidence relied upon by the prosecution did not support such a claim. The actions of the members on the scene of the crash belie any attempt to hide the incident. If the members intended to conceal the incident, they would not have stayed on the scene and communicated on the radio, as they did that evening. Instead of leaving or letting other members handle the crash, the members activated their BWC as soon as they exited the CST vehicle and rushed to provide first aid to Mr. Hylton-Brown. Within three minutes of the crash, Lieutenant Zabavsky notified the dispatcher of the accident and requested an ambulance be sent to the scene. Lieutenant Zabavsky spoke with the EMT personnel once the ambulance was on the scene. Prior to leaving the scene, Lieutenant Zabavsky requested MPD report numbers. Officer Sutton immediately checked on the welfare of the individuals in the striking vehicle, obtained their information, and took photos on the scene. These affirmative actions demonstrate that the members actively assisted on the scene of the crash and disprove that they tried to conceal the incident. These facts were not included in the audit.

The CST members kept their BWCs activated the entire 22 minutes that they were on the scene of this accident. The prosecution's claim that Officer Sutton and Lieutenant Zabavsky prematurely deactivated their BWC to discuss their alleged cover-up is an assertion with literally no evidence to support the theory. To the contrary, they deactivated their BWCs after the ambulance had left the scene, after receiving report numbers, and just prior to the other CST members departing the scene.

Next, the jury was incorrectly led to believe that MPD policy and practice required Officer Sutton and Lieutenant Zabavsky to request that the Major Crash Investigations Unit ("Major Crash") respond to the scene immediately at the time of the crash. To be clear, MPD policy is not specific as to *when* Major Crash should be called. Instead, the directive only requires that Major Crash be notified for a fatality or a crash involving a serious injury in which the person may die. The timing of a Major Crash notification has an element of judgment. Here, Lieutenant Zabavsky did notify Major Crash as soon as he received notification from the hospital that Mr. Hylton-Brown's injuries were likely fatal. MPD's review did not find any misconduct for failing to summon Major Crash from the scene since the testimony at trial was that Mr. Hylton-Brown was unconscious but breathing. Further, Officer Sutton was recorded asking "is he [Hylton-Brown] up?" to the officers providing first aid, reflecting his perception that Mr. Hylton-Brown had been knocked out but would regain consciousness.

Some of the most instructive trial testimony on this point was provided by Michael Miller who was the lead detective in the Department's Major Crash unit for 26 years before his

[3] MPD's Office of the General Counsel (OGC) has reviewed several dozen pursuit investigations as part of its review of discipline cases, knows MPD's vehicular pursuit policy and practice, and evaluated this pursuit in that context. By contrast, the defense was precluded from questioning the Internal Affairs official at the criminal trial regarding other pursuit investigations; therefore, the jury did not possess any information about other pursuit investigations and had no point of reference for its deliberations.

retirement in 2016. In fact, Mr. Miller was the subject matter expert who helped draft the Department's general order regarding traffic investigations when Major Crash was first created. Mr. Miller testified that "everything was being taken care of" by Officer Sutton, Lieutenant Zabavsky, and the other CST members at the crash scene, that the crash scene was continually secured, and that Officer Sutton, Lieutenant Zabavsky, and the other CST members did "what they were supposed to do," and complied with the MPD general order. Further, he testified there was no unreasonable delay in the notification to Major Crash. Mr. Bromwich failed to include any reference to Mr. Miller's testimony in the audit.

The members took no action to obstruct justice at the station

The members' actions at the station show that they acted diligently. After leaving the scene, they responded directly to the station and Lieutenant Zabavsky and Officer Sutton reported to Watch Commander Franklin Porter. During this initial conversation, it is undisputed that Lieutenant Zabavsky told his supervisor "we tried to stop" Mr. Hylton-Brown. After Watch Commander Porter responded that it would not be their fault if the moped fled from a stop and was involved in an accident, Officer Sutton did not downplay or minimize their involvement but rather clarified that the members had been following the moped for two minutes. Inexplicably, this conversation was omitted from the audit.

Lieutenant Zabavsky continued to meet with Watch Commander Porter at the station while Officer Sutton prepared the crash report. Lieutenant Zabavsky agreed with Watch Commander Porter during their second conversation that the attempted stop had turned into a pursuit.[4] Also during this time, the CST members were communicating with the officer present at the hospital with Mr. Hylton-Brown. Once that officer reported that Mr. Hylton-Brown's injuries were critical, Lieutenant Zabavsky immediately called Major Crash on his own initiative and reported this information to Watch Commander Porter. Thereafter, Lieutenant Zabavsky continued to communicate with his supervisor at the station and on the scene while Major Crash responded. Finally, before checking off that shift, Lieutenant Zabavsky designated ("tagged") the BWC footage involved in this matter for investigation, which preserved the BWC for a longer period of time than the normal retention period.[5] Again, these actions are consistent with MPD policy and practice and discredit the theory that the members were attempting a "cover-up."

The draft crash report did not support an obstruction of justice charge

There is no merit to the prosecution's assertion that the *draft* crash report prepared by Officer Sutton was untruthful or otherwise supported their "cover-up" claim. After returning to the station, Officer Sutton started drafting the crash report in the Department's report writing system. The Department's review determined that this draft report fairly described the matter and was consistent with MPD report writing standards. Officer Sutton

[4] Again, the audit misstates material facts in this matter. According to the audit, IAD concluded that Lieutenant Zabavsky "did not acknowledge that the incident was a vehicle pursuit" during this conversation with Watch Commander Porter at the station. Audit pg. 28. The IAD report did not make this finding. To the contrary, the record reflects that both men agreed the attempted stop turned into a pursuit during their second conversation that evening.

[5] This information was also not included in the audit.

appropriately ceased those efforts once he received the calls from the hospital that made clear that Major Crash would handle the investigation. Officer Sutton did not review any BWC footage during the time he was drafting the report.

During the criminal trial, the prosecution argued that word choices Officer Sutton used in the draft report supported the obstruction of justice charge. The draft report described Mr. Hylton-Brown as "unresponsive," while the prosecution argued it should have stated "unconscious." The prosecution challenged the description of the injury as a "superficial abrasion on the left eyebrow line" when in reality, the autopsy report validated the draft report's description of the injury, describing it as a "roughly 1-inch vaguely circular abrasion on his forehead." The prosecution disputed Officer Sutton's draft description of the vehicle damage; yet, the photos of the striking vehicle support the draft report's description of the vehicle damage.

Police policy expert Mr. Miller also found Officer Sutton's draft report to be quite detailed, which would not have been the case if he wanted to conceal the facts. And notwithstanding the prosecution's semantics arguments, the Major Crash detective did not note any inconsistencies or issues with the draft report prepared by Officer Sutton, and, in fact, he relied upon it to complete the final crash report. Although these facts were included in the IAD report, they were not included in the audit. IAD Report pg. 65.

In summary, MPD's review found that the members' actions on the scene and subsequently at the station complied with MPD policy and practice and were not criminal.

The Audit Ignored Significant Prosecutorial Issues

In addition to the unprecedented nature of this prosecution, there were several other irregularities that cannot be ignored, including at least two significant *Brady*[6] violations committed by the prosecution. The audit failed to include any discussion of these events and thereby fails to present a balanced consideration of this matter. In fact, the audit inexplicably claimed that "there is no evidence that the prosecutions were handled in anything other than a professional and apolitical manner."

The first violation involved an eyewitness to the incident who voluntarily provided a statement to an uninvolved MPD officer shortly after the inditement because he "didn't want to see somebody [Officer Sutton and Lieutenant Zabavsky] get in trouble for something they didn't do." In his initial statement that was recorded on BWC, the witness provided information favorable to the defense stating that he saw Mr. Hylton-Brown throw something when he was being followed by the police, which would support the members' position that they had reasonable articulable suspicion for a *Terry* stop. However, instead of promptly providing this exculpatory evidence to the defense, the prosecution delayed informing the defense while they separately met with the witness. Ultimately, this witness recanted his favorable testimony and stated that the prosecution's investigator, Special Agent Sean Ricardi, told him to "just say you lied, and you'll never have to see me again." *See U.S. v. Sutton*, December 6, 2022 trial transcript.

[6] *Brady v. Maryland*, 373 U.S. 83 (1963).

The second *Brady* violation involved a prosecution witness with a criminal record. The prosecution not only failed to disclose the witness's criminal record to the defense, it affirmatively represented in open court that the witness did *not* have a criminal record. Undisputed testimony in the criminal trial showed that Special Agent Ricardi provided the prosecutors with this witness's criminal record, which included the conviction at issue, prior to a witness conference. But during the trial the same prosecutor represented to the Court and defense counsel that the witness did not have a criminal record. This witness then proceeded to provide false testimony regarding his criminal record. This falsity was only brought to light by defense counsel when it challenged the prosecution. Neither of these prosecutorial issues were mentioned in the audit.

The Audit Contained Substantive Errors and Omissions

While it is clear that Mr. Bromwich disagreed with the discipline imposed in this case, the audit itself contained several substantive errors and omissions that cannot stand unaddressed. In short, Mr. Bromwich viewed and included only the evidence presented by the criminal prosecutors and did not include arguments and evidence supportive of the sworn members even though the Department provided Mr. Bromwich with full access to the complete criminal record and administrative file. Further, the material facts related to the attempted stop, crash, and conversations at the district station were also omitted or misstated in the audit. As a result, the audit did not accurately describe the circumstances regarding this matter.

<u>The audit omitted and misconstrued material facts regarding the attempted stop and the crash</u>

The audit misstated and omitted important facts and arguments regarding the members' basis for attempting to conduct a *Terry* stop. As described above, Mr. Hylton-Brown was a member of the KDY gang with a lengthy criminal history, but this information was not included in the audit. Instead, the audit misleadingly indicated that Mr. Hylton-Brown "was not wanted on any criminal charges *at the time of the incident*" and that the KDY gang was a "loosely affiliated gang." Audit pgs. 12 & 49. These statements are contradicted by Mr. Hylton-Brown's extensive criminal record, including his arrests for possession with the intent to distribute a controlled substance and his status as a fugitive from justice six months prior to this incident, which was detailed in the IAD report provided to Mr. Bromwich. IAD Audit pg. 117. Further, no impartial reviewer would describe the KDY criminal gang as a "loosely affiliated gang."[7] The fact that the members were precluded from arguing they were attempting to make a *Terry* stop and the factors that supported that attempted stop were also omitted from the audit.

As mentioned above, the audit omitted mention of Mr. Hylton-Brown's culpability for failing to yield the right-of-way when he entered Georgia Avenue, a violation of traffic laws cited both in the Internal Affairs report and determined to be the cause of the accident by the Major Crash detective. Worse, the audit apparently invented a contributing factor to the crash, asserting that "because of obstructed views, neither Hylton-Brown nor the driver

[7] *See* fn 1.

of the Toyota had an opportunity to avoid the impact" There is no evidence in either the IAD report or the criminal trial record to support this claim. Indeed, not even the criminal prosecutors put forth such an argument. Yet Mr. Bromwich proffered this groundless "obstructed view" claim as fact.

The audit also sought to portray this matter as a lengthy pursuit at dangerous speeds, which it was not. The audit stated that Hylton-Brown was pursued by police for *several* minutes and described it as a "lengthy pursuit." Audit pgs. 1, 12, & 13. In fact, the pursuit was three minutes in duration. However, the audit never provided this exact time, which is always a critical detail in a police pursuit. IAD report pg. 115. Similarly, the audit only provided "up to 40 mph" as the speed of the CST vehicle. However, the IAD report described in detail how the CST vehicle also travelled at low speeds and included that the vehicles stopped at times, which would demonstrate to an impartial reviewer that this was a comparatively low-speed pursuit. *Id.* at 80-82. Similarly, the audit claimed that the CST vehicle was in "close pursuit" in the alley before the accident when in actuality the police vehicle never made contact and was three car-lengths behind the moped.

The audit never addressed Mr. Hylton-Brown's decision-making on the evening that resulted in his death and was did not provide a full accounting of the drugs and alcohol that were in Mr. Hylton-Brown's system on the night of the accident. The audit only stated there was evidence of two drugs – marijuana and oxycodone – while the hospital tests also detected a third drug (Benzodiazepine) in Mr. Hylton-Brown's system. While it is true that the autopsy conducted three days after the accident did not detect this third drug, this discrepancy should have at the very least been noted to present the complete evidence on such a crucial issue. Audit pg. 14. In addition, this portion of the audit stated that the autopsy did not show evidence of alcohol in Mr. Hylton-Brown's system but, again, this presented an incomplete picture. *Id*. In fact, the toxicology records *did* show that acetone – a form of alcohol – *was* detected in Mr. Hylton-Brown's blood on the night of the accident.[8] In addition, Officer Cory Novick testified that Mr. Hylton-Brown's vomit smelled of alcohol. While by no means conclusive, these facts provide support for Lieutenant Zabavsky's stated belief that Mr. Hylton-Brown was under the influence of alcohol, and should have at least been mentioned in the audit.

One of the most glaring material misstatements in the audit was the assertion that IAD's review of Officer Sutton's BWC "showed that . . . he deactivated the BWC as he walked with Zabavsky towards Zabavsky's parked MPD cruiser and deactivated [his BWC] when Zabavsky asked him whether his BWC was still operating and Sutton said, "I can go off." Audit pg. 31. This assertion was never included in IAD's report and is an incorrect characterization of Officer Sutton's BWC footage. Contrary to the audit's assertion, Officer Sutton did not deactivate his BWC at that time; instead, he kept it activated for eight more minutes. BWC reflects that Officer Sutton actually said the following to Lieutenant Zabavsky before deactivating his BWC: "Alright, are we done?" and that Lieutenant

[8] This issue was the subject of a *Brady* motion for sanctions in the criminal case. See *U.S. v. Sutton*, docket entries 442 and 510.

Zabavsky responded: "Yeah." It was only at that point that Officer Sutton deactivated his BWC and not at the point in time claimed in the audit.

The audit contained a material omission regarding the events at the station

The audit omitted important pieces of the first conversation between Lieutenant Zabavsky, Officer Sutton, and Watch Commander Franklin Porter while at the station. Audit pgs. 15-16. Again, the facts favorable to the members were left out. In particular, Watch Commander Porter testified that he did hear over the main radio that this traffic crash involved injuries, that an ambulance was transporting the injured person to the hospital, and that Lieutenant Zabavsky told him that "*we* were attempting to stop" the moped that was involved in the crash during this first conversation. (emphasis added), *U.S. v. Sutton*, November 17, 2022, trial transcript. After Watch Commander Porter told the members that it would not be their fault if they attempted to stop the vehicle and it was involved in an accident after it fled, Officer Sutton voluntarily clarified to Watch Commander Porter that they were "following the moped for two minutes."[9] This important exchange was not included in the audit.

The audit incorrectly described MPD discipline in these cases

Even after numerous interviews with the Director of the MPD Disciplinary Review Division (DRD), the General Counsel, and the production of the entire administrative and criminal file, the audit still failed to accurately describe the DRD Director's statement and relevant disciplinary documents. MPD's DRD Director was interviewed twice by Mr. Bromwich and produced several rounds of documents in response to Mr. Bromwich's requests. Thereafter, Mr. Bromwich produced a summarized version of those interviews and provided the Director with the opportunity to review and edit the summary. The Director provided Mr. Bromwich with edits that were misstated in the audit.

Specifically, in response to Mr. Bromwich's question about whether recommending termination for Officer Sutton was a difficult decision, the DRD Director stated "it was not because of the criminal conviction at that time. Similarly, with regard to Lieutenant Zabavsky, the Director submitted "it was not a difficult decision because of the criminal conviction at that time." Instead, the audit stated with regard to Officer Sutton, "that in view of the underlying facts, and the jury's verdict supporting those facts, 'termination was front and center,'" even though the Director specifically struck *all* of the quoted language. Audit pg. 41.

Second, the audit alleged that there was an "error in analyzing the *Douglas* Factors that did not affect the discipline recommended by [the DRD director] – termination – but may have affected the subsequent review conducted by MPD after President [Donald] Trump

[9] While the IAD report and criminal trial testimony estimated the pursuit at three minutes, this estimate starts at the moment when the stop was attempted at 5th and Kennedy Streets at 2208 hours. IAD report pg. 115. However, the actual pursuit time would have to be less than three minutes, commencing only after the attempted stop became a pursuit. As such, the two-minute statement provided by Officer Sutton was a reasonable estimate especially considering he had not had the opportunity to review BWC when he made the statement.

pardoned Sutton." Audit pg. 40. In this paragraph, the audit alleged that the Notice of Proposed Adverse Action (NPAA) should not have assessed *Douglas* Factor 3 as "mitigating," because Officer Sutton received a prior sustained investigation in 2019. The audit's assertions in this regard are incorrect. In 2019, an investigation found that Officer Sutton had engaged in a justified pursuit but that communications should have been made on a different radio channel. Officer Sutton received an Official Reprimand (corrective action) that was to be removed from his personnel folder after one year. *Douglas* Factor three of the NPAA correctly stated that Officer Sutton did not have any sustained investigations *which resulted in Adverse Action* in the past three years, because an Official Reprimand is corrective, not adverse action. The DRD Director explained this to Mr. Bromwich however, the incorrect information was included in the audit.

Finally, the audit failed to include any recognition of the other fatal pursuit cases that MPD considered in determining the appropriate penalty in this matter even though these materials were provided to Mr. Bromwich. In those comparable cases, the administrative matters resulted in suspensions from duty as the penalty for the involved members. Again, the audit appears to have purposely excluded any information that did not support Mr. Bromwich's conclusion that termination should have been imposed in this matter.

<u>The audit misrepresented MPD's commitment to reform</u>
While praising the reform efforts of other Chiefs of Police, the audit asserts "Since Chief [Peter] Newsham's departure, his successors, Robert Contee III (2021-2023) and Pamela A. Smith (2023 – present) have not demonstrated the same commitment to reform efforts." Audit pg. 9. This claim is false. Chief Contee agreed in whole or in part to implement all recommendations from the last audits Mr. Bromwich authored. In a 2022 report to Council, you wrote, "Based on the information provided by the Department and the documentation reviewed by members of The Bromwich Group, it appears that most of our recommendations are either fully implemented or in progress. Chief Robert J. Contee, III, and his team are to be congratulated on this significant progress."

During my tenure, MPD cooperated fully with ODCA's audit "*MPD Policies Curb Influence from Hate Groups*," and in particular your recommendations to ensure that recruiting updates its hate group keywords for background investigations; to provide training to the entire department on extremism symbols and groups; to provide in-service training on implicit bias and impartial policing; that such annual training be tracked; and that Office of Police Complaint allegations are tracked and reconciled with policy.

Other than disagreeing with the department's decision not to terminate Officer Sutton and Lieutenant Zabavsky, Mr. Bromwich produced no evidence to indicate either Chief Contee or I are resistant to reform.

MPD's Response to Recommendations

Recommendation #1—MPD Should Create a Policy Explicitly Prohibiting Obstruction of an Administrative or Criminal Investigation

MPD rejects this recommendation as already implemented. The current disciplinary system expressly addresses such misconduct. MPD policy expressly prohibits compromising a felony or any other unlawful act, conduct unbecoming, and detrimental conduct, with a penalty of termination available depending on the severity of the misconduct. (*See* General Order 120.21 (Sworn Employee Discipline), Attachment A).

Recommendation #2 – IAB Reports of Investigation Should Include an Executive Summary and Table of Contents

MPD rejects this recommendation as duplicative and unnecessary for most cases. First, as to the recommendation for "a bottom-line findings of the report," the IAD agent included both a "Summary and Conclusions" section (*see* pages 134-152) and a "Findings" section (*see* pages 152-168) in his investigative report, so it is unclear how further summary is needed or warranted. Most IAB reports are not long enough to warrant a table of contents; the length of this report was due to the criminal trial. Despite having reviewed several IAB reports in its previous audits, this recommendation was never previously made by Mr. Bromwich. Agents are, of course, free to include tables of contents on a case-by-case basis as they deem appropriate.

Recommendation #3—MPD Use of Force Policy and Training Should Incorporate the Totality of the Circumstances Test as Articulated in the Supreme Court's 2025 Decision in Barnes v. Felix

MPD rejects this recommendation as already implemented. General Order 901.07 (Use of Force) provides the following:

> Part II.A.1 "Members shall only use force that is objectively reasonable."
>
> Definitions, Part III.7 "Standard requiring the reasonableness of a particular use of force must be judged from the perspective of a reasonable law enforcement officer on the scene in light of the totality of the circumstances confronting the member."
>
> Regarding deadly force: Part II.A.8 "Members shall not use deadly force against a person unless the member actually and reasonably believes that deadly force is immediately necessary to protect the member or another person (other than the subject of the use of deadly force) from the threat of serious bodily injury or death, the member's actions are reasonable given the totality of the circumstances, and all other options have been exhausted or do not reasonably lend themselves to the circumstance.

> Part II.G.1 "The scope of serious use of force and deadly force investigations shall be broader than the actions of the member(s) at the point that serious or deadly force is used. The actions, tactics, and decisions of all MPD participants in the event shall be assessed against MPD policy requirements to inform training and identify opportunities for improvement."

Further, despite Mr. Bromwich's repeated references to use-of-force, this was not a use-of-force case. Mr. Bromwich is incorrectly using a term of art used in law enforcement and defined in MPD General Order 901.07 as "any physical coercion used to affect, influence, or persuade an individual to comply with an order from a member is considered a use of force." Instead, MPD General Order 301.03 (Vehicle Pursuits) and 304.10 (Field Contacts, Stops, and Protective Pat Downs) govern this matter. This did not become a use of force matter simply because it was reviewed by the UFRB, as their jurisdiction is extended to "all IAD use of force investigations of MPD members, chain of command investigations forwarded to UFRB by the IAB assistant chief, and *vehicle pursuits resulting in a fatality*." (*See* GO 901.07 Part II.J.1).

> *Recommendation #4—The UFRB Should Make Improvements to the Decision Point Analysis Matrix*

As written, this recommendation is not actionable. As reflected in the audit, MPD has used DPAMs for more than 20 years.

> *Recommendation #5—The UFRB Should Review the Totality of the Use of Force Including Relevant Facts and Events Before and After Force Was Used*

As acknowledged in the audit, the recommendation that the UFRB review the totality of the Use of Force is already required by policy. (*See* GO 901.07 (Use of Force) Part II.J.7)

> *Recommendation #6—The Implementation of UFRB Recommendations Should Be Tracked; and*
> *Recommendation #7—The UFRB's Recommendation in this Case to Revise the Vehicle Pursuit Policy Should Now be Adopted*

These recommendations are premised on the audit's assumption that the UFRB recommendation was not implemented because it was not tracked. This is not true. In an April 2, 2025, email, Policy and Standards Director O'Connell advised Mr. Bromwich that MPD had decided the addition would be "duplicative and unnecessary" since MPD was implementing duty to intervene language in General Order 201.26 (Code of Conduct) and all officers were being trained in Active Bystandership for Law Enforcement (ABLE). This was MPD's substantive response and it has not changed. There is no evidence in the audit that UFRB recommendations are not tracked and implemented when approved. Accordingly, the recommendations are rejected.

Recommendation #8—The Buffer Period for the Audio of Body Worn Cameras Should Be Extended to Two Minutes

MPD rejects this recommendation and reiterates the response it provided to the Office of Police Complaints in 2022. At that time, MPD surveyed 26 other jurisdictions. Of those jurisdictions, 21 had shorter video (without audio) buffer times than MPD, while Chicago, Houston, and San Diego matched MPD's two-minute video buffer. Kansas City, Missouri reported having both audio and video for their buffer, but their buffer was only for 30 seconds. While the audit asserts that Chicago now has a two-minute video and audio buffer, that is contrary to the information provided to MPD when we sought verification.

Recommendation #9—The Chief of Police Should Familiarize Herself with the Record in High-Profile Cases

MPD rejects the premise of this recommendation. First, the assertion that the death of Mr. Hylton-Brown and the criminal prosecution of Officer Sutton and Lieutenant Zabavsky occurred during my tenure as Chief of Police is false. Indeed, Mr. Hylton-Brown's death occurred nearly two years before I joined MPD in my civilian role as its Chief Equity Officer.

I reject the assertion that I was unable to describe the rationale for the disciplinary decisions in hearings before the D.C. Council. For context, these were MPD's performance oversight and budget hearings focused on wide-ranging policing performance and finance issues, not hearings dedicated to this case. My responses to multiple Councilmembers' questions during these hearings, including some apparently scripted by ODCA, struck a balance between the information that could be shared publicly and confidential personnel information that could not be disclosed, regardless of the publicity surrounding the case. The public's desire for more information is understandable, but I am nevertheless required to abide by the privacy rules applicable to personnel actions.

Recommendation #10—The Chief of Police Should Issue Decisional Memos Providing the Reasons for Her Decisions

I reject this recommendation as already covered by MPD policy. General Order 120.21 (Sworn Employee Discipline) Part II (B) and (C) authorize members to appeal adverse actions and terminations to the me as the Chief of Police. My responses to those appeals are served on the member and constitute final agency action for purposes of implementation of discipline and appeal to the Office of Employee appeals, as appropriate. In those responses, I articulate my assessment of the underlying disciplinary matter, the arguments raised in the appeal, and my response to those arguments.

Settlements of disciplinary matters can occur throughout the disciplinary process and involve a range of officials negotiating with members and their representatives over terms and conditions of the agreements. This process is highly successful, resolving the vast majority of cases and ensuring that members have a voice in the disciplinary process. As they did in this case, settlements authorized by me reflect the charges that are sustained

against the member, the specific policies that have been violated, the penalty to be imposed, and any additional required training, as applicable.

> *Recommendation #11—The Chief of Police Should Share the Reasons for Rejecting IAB Findings and DRD Recommendations with Relevant Personnel*

I reject this recommendation which would have me communicate directly with the IAB investigators and DRD director concerning their independent roles in the investigative and disciplinary process. IAB investigations are sensitive; they always involve allegations of serious misconduct and may be criminal in nature. DRD is responsible for discipline Department-wide and must have the authority to make independent decisions on each case, weighing the seriousness of the misconduct, the relevant aggravating and mitigating factors, and the discipline that was imposed in comparable cases. If I was to provide a written, or worse, in-person examination of their work, it would have an irrevocably chilling effect on the independence of IAB's investigative and DRD's disciplinary functions. MPD's disciplinary process is purposefully structured so that each stage of the process functions independently and free from MPD command influence. Intentionally imposing that interference in a paramilitary organization, especially from the highest authority in MPD, would undermine the institutional morale, cohesion, and transparency this recommendation cites in support.

This recommendation is particularly inapt as applied to this case. Here, criminal convictions existed at the time IAB completed its investigation and DRD proposed discipline. As such, IAB and DRD were constrained and required to follow the prosecution's evidence and arguments. However, by the time the case was presented to the me, those convictions no longer existed as a matter of law under the precedent established in *Schaefer*, above. I was required to review this case with a "clean slate" and conduct an independent review. Thus, the administrative cases considered by me were materially different than the criminal cases evaluated by IAB and DRD, which naturally led to a different disciplinary outcome.

The Audit Violated Auditing Standards

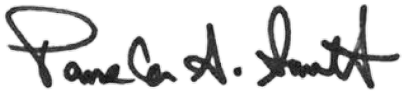
Prior audits performed by the Office of the DC Auditor (ODCA) have been performed in accordance with Generally Accepted Government Auditing Standards also known as the Yellow Book. *See e.g.*, "*36 Fired MPD Officers Reinstated*" at 8. The Yellow Book provides generally accepted government auditing standards for auditors of government entities to perform their audits and produce their reports. One of the core standards is objectivity, which is defined as independence of mind and appearance when conducting engagements, maintaining an attitude of impartiality . . . and being free of conflicts of interests. *See* GAO Yellow Book 3.11. The GAO provides that an auditor's objectivity in discharging their professional responsibilities is the basis for the credibility of auditing in the government sector. *Id*. As was made clear during my interview with Mr. Bromwich, he did not view his role in this audit to be that of an objective, impartial auditor. As a result, the audit clearly reflects his bias and agenda.

Mr. Bromwich makes no secret of his decades-long relationship with and admiration for his former colleague Senior Judge Paul Friedman, the judge who oversaw the criminal trial in this matter. Senior Judge Friedman made all of the rulings in this case concerning what the jury would and would not be permitted to hear. Senior Judge Friedman determined whether or not the prosecution would be sanctioned for their *Brady* violations. It was Senior Judge Friedman who rejected Officer Sutton and Lieutenant Zabavsky's motions to set aside the verdicts, and Senior Judge Friedman who rejected Officer Sutton and Lieutenant Zabavsky's motions for a new trial. It was also Senior Judge Friedman who took the extraordinary step of providing his personal opinions on both this case and the administrative matter to the Washington Post, an action that was particularly concerning since the civil case related to this matter is still pending. Mr. Bromwich thought so much of this article that he went to the extra effort to bring a copy of it with him to my interview. It was after that interview that Mr. Bromwich confessed that he had spoken to Senior Judge Friedman about the criminal case during a lunch date while the criminal case was pending. Mr. Bromwich admitted that he never previously disclosed this relationship with Senior Judge Friedman to you. When this seemingly obvious impropriety was pointed out to Mr. Bromwich, his retort was "sue me."

It is undisputed that under the Yellow Book auditing standards, Mr. Bromwich should have disclosed his relationship and potential conflict of interest to both you and the Department. Mr. Bromwich's relationship with Senior Judge Friedman created a lack of objectivity that was apparent in the interviews that he conducted and thoroughly tainted his findings and recommendations in this audit.

For all of the reasons described above, I am compelled to reject the audit's findings and recommendations.

Sincerely,



Pamela A. Smith
Chief of Police

cc: Betsy Cavendish, General Counsel, Executive Office of the Mayor